

# FASTER FREIGHT-CLEANER AIR

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Long Beach Convention Center  
Goods Movement 101:  
Legal Authority

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## Clean Air Act

- EPA to regulate: motor vehicles (CAA §202), locomotives (CAA §213(a)(5)), and nonroad engines, including ships (CAA §213(a))
- State and local governments preempted from establishing emission standards for motor vehicles (CAA §209(a)) and nonroad engines (CAA §209(e)), including locomotives
- California may set emission standards for motor vehicles or nonroad engines, except locomotives, with EPA authorization (CAA §§209(b), 209(e))
- Districts/locals may set emission standards with EPA authorization, but may need to be adopted/submitted by CARB



## State Law Authority

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- CARB primary authority over motor vehicles (H & S §§ 39002, 40000).
- Districts and local governments primary authority over non-vehicular sources, including locomotives and ships (H & S §§ 39002, 40000).
- CARB to set emission standards for nonvehicular engines, including locomotives and ships (H & S §43013(b)).
- CARB and districts/locals have concurrent authority over ships and locomotives.



## Use and Operational Limits

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- States & locals may adopt use and operational limits for motor vehicles (CAA §209(d)).
- States & locals may adopt use and operational limits for nonroad engines, including ships and locomotives (40 C.F.R. Pt. 89, Subpt. A, App. A), including fuel limits, emission caps, and hours of operation.
- Fuel limits not preempted for nonroad engines; federal preemption for motor vehicle fuel excludes California (§211(c)(4)(B)).



## Special Considerations Relating to Locomotives

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- Locomotive Boiler Inspection Act (45 U.S.C. §22 et seq.) preempts state and local requirements to put any equipment on locomotives but does not limit regulation of use.
- Interstate Commerce Commission Termination Act (49 U.S.C. §§10101 et seq.) grants exclusive authority over rail transportation to Surface Transportation Board and preempts certain state and local regulations.
- ICCTA preempts zoning, environmental, nuisance, building permit laws insofar as they interfere with rail construction or operations. Regulations that do not interfere are not preempted. *Green Mountain R.R. Corp. v. State of Vermont*, 404 F.3d. 638 (2d. Cir. 2005).



## Special Considerations Relating to Ships

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- Coast Guard required to issue safety-related regulations for design and construction of vessels (46 U.S.C. §3306); state and local regulations may not conflict with them.
- EPA to decide in 2007 whether it has authority to regulate foreign-flagged ships under Clean Air Act.
- International law may authorize coastal states to establish environmental requirements for foreign flagged vessels as conditions for entry into ports. U.N. Convention on Law of the Sea, Article 21, Article 211.
- Issue regarding extent to which state and local authorities may regulate beyond the 3-mile jurisdictional limit of the state.



## Commerce Clause

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- State or local regulations discriminating against interstate commerce invalid unless they serve legitimate local purpose that cannot be served as well by available nondiscriminatory means. *Maine v. Taylor*, 477 U.S. 131 (1986).
- Nondiscriminatory regulations with only incidental burden on interstate commerce valid unless burden on commerce clearly excessive in relation to local benefits. *Pike v. Bruce Church*, 397 U.S. 137 (1970).
- Regulation burdening foreign commerce invalid if interferes with Federal Government's ability to "speak with one voice" in foreign policy. *Japan Line, Ltd. V. County of Los Angeles*, 441 U.S. 434 (1979).



## Local Government Authority

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- Municipal police power authority to regulate to protect health and welfare (Cal. Const. Art. XI §7).
- State law authority co-extensive with air districts relative to nonvehicular sources (but may not be less stringent) and may adopt transportation control measures for vehicular sources (H & S §§ 40000, 40717) (subject to same preemption and other issues).
- CEQA and land use authority may allow imposition of mitigation conditions.
- Ports may use leasing authority to mitigate adverse impacts.
- Incentive programs may obtain emission reductions.



## Market Participant/Municipal Proprietor Doctrines

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- City acting as Market Participant may choose to require clean air measures, particularly where city has contractual relationship with sources. *Building & Construction Trade Council v. Associated Builders & Contractors (Boston Harbor)*, 507 U.S. 218 (1993).
- Port as landlord may impose clean air measures as condition on leases, acting as “municipal proprietor.” *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973).
- For more information see Port of L.A. No Net Increase Report: [http://portoflosangeles.org/environment\\_studies.htm](http://portoflosangeles.org/environment_studies.htm) [Section 5].